RE SYED HASSAN BIN ABDULLAH ALJOFRI DECEASED; THE ESTATE & TRUST AGENCIES (1927) LTD. v. SYED HAMID BIN HASSAN ALJOFRI & 2 ORS.

[Orig. Civil Juris. (Taylor, J.) June 24, 1949]
[Singapore — Probates Nos. 697 and 573 of 1948]

Will — Testator not domiciled in the Colony — Subsequent marriage — Wills Ordinance.

This probate action raised the question of revocation of a Will by a subsequent marriage, the testator being domiciled abroad. The facts of the case were that the testator, who was a Shafeite Mohammedan, left a very large estate comprising land and houses and also moveable property both in Johore and in Singapore. He was first married about the year 1900. He made his Will in Johore in 1935. It was in the English language and it was admitted that as regards execution and attestation it complied with the Wills Ordinance. In 1941 the earlier marriage still subsisting, he married a second wife. There are children of both marriages, some of them minors. Both widows are still alive. The Will was proved in Johore in 1944 and after the war a fresh grant of probate was made in substitution for the Japanese grant. The executors applied for the resealing in Singapore of this substituted grant. The Plaintiffs acting on behalf of the second widow and other beneficiaries applied for a grant of letters of administration limited to the immoveable property in Singapore. By a separate order of this Court the Plaintiffs were appointed receivers of the Singapore estate, pendente lite. Pleadings were ordered. The Plaintiffs are a trust company and the Defendants are the executors. In the petition for letters of administration, which is the statement of claim, it was pleaded that "the subsequent marriage revoked the Will in respect of the immovable property in the Colony".

Held, (1) that the Will of a testator not domiciled in the Colony is not revoked on a subsequent marriage and may be operated even as to land in the Colony; **Re Shaik Abubakar bin Mohamed Lajam deceased**, (1935) M.L.J. 137 discussed and not followed; (2) resealing is a matter of discretion and may be deferred, or even refused, in special circumstances.

Cases referred to:—

(1) *In re Caithness* (1891) 7 T.L.R. 354.
(2) *In re Martin* (1900) P. at p. 233.
(3) *Re Shaik Abubakar* (1935) M.L.J. 137.
(4) *In re Abdullah* 2 Kyshe Eccl. 8.

PROBATE ACTION.

N. A. Mallal for the Plaintiffs.
John Pillai for the 1st Defendant.
Philip Hoalim for the 2nd and 3rd Defendants.

Taylor, J. : — This probate action raises the question of revocation of a will by a subsequent marriage, the testator being domiciled abroad.

The testator, who was a Shafeite Mohammedan, left a very large estate comprising land and houses and also moveable property both in Johore and in Singapore.

He was first married about the year 1900. He made his will in Johore in 1935. It is in the English language and it is admitted that as regards execution and attestation it complies with the Wills Ordinance. In 1941, the earlier marriage still subsisting, he married a second wife. There are children of both marriages, some of them minors. Both widows are still alive. The will was proved in Johore in 1944 and after the war a fresh grant of probate was made, in substitution for the Japanese grant.

The executors applied for the resealing in Singapore of this substituted grant.

A trust company acting on behalf of the second widow and other beneficiaries, applied for a grant of letters of administration, limited to the immovable property in Singapore.

An administration action is pending in Johore in which action some of the beneficiaries seek removal of the executors, as trustees.

The Johore Court has already decided that some of the main provisions of the will are void or inoperative; I think this was by way of construction of the will.

By a separate order of this Court the trust company have been appointed receivers of the Singapore estate, *pendente lite;* there is therefore no urgency by reason of assets in jeopardy. Pleadings were ordered and the two petitions were set down for hearing at the same time. The trust company are the plaintiffs and the executors are the defendants.

In the petition for letters of administration, which is the statement of claim, it is pleaded that "the subsequent marriage revoked the will in respect of the immovable property in the Colony" and that there is therefore a partial intestacy as to this property.

In their defence the executors plead that the testator was domiciled in Johore; that as the will was proved in Johore it is valid by the law of the domicile; that although this Court might decide that the provisions relating to the immovable property in the Colony are void, yet the will itself is good; that "the wishes of the testator as to his choice of executors should be respected" and that for all these reasons the Johore probate should be resealed.

These pleadings are loose, inaccurate and in some respects misleading but at the hearing I was asked to decide only the questions whether the will was revoked by the subsequent marriage and whether the Johore Grant should be resealed. Certain other questions may require decision at a later stage.

No evidence as to domicile was adduced but Counsel for all parties agreed that that the testator was an Arab; that he was brought from Arabia to this country in his childhood; that he lived in the State of Johore until his death which occurred in 1943; that he had paid one or two visits to Arabia and that he never resided in the Colony though he owned both immovable and movable property here.

It seems probable that he had a domicile of origin in Arabia but in the absence of any information about his father this cannot safely be inferred. He may have acquired a domicile of choice in Johore but whether he had done so at the date of the marriage is very doubtful; this point might, in certain circumstances become important. There has never been any express finding by the Johore Court on the issue of domicile and no finding can be inferred from the bare granting of probate because no finding was necessary for that purpose.

The questions where he was actually domiciled at the date of the will, at the date of the marriage and at the date of his death are therefore entirely open but for the present purpose it is sufficient that he was clearly never domiciled in the Colony.

On the issue of subsequent marriage I would say first that in my view the plea of partial revocation is misconceived. To say that a will may be revoked, in part, by a codicil is really a loose way of saying that a particular gift may be revoked by a codicil, the remainder of the will being unaffected. Marriage does not revoke particular dispositions; if it revokes anything, it revokes the whole will (except as to the exercise of certain powers of appointment).

This plea was, I think, intended to suggest the argument that dispositions of land are governed by the *lex situs;* that a Singapore will is revoked by a subsequent marriage and therefore that this will is inoperative as to land in the Colony.

The authorities on this topic are fewer and less cogent than might have been expected. The earliest case which I have found is *In re Caithness*[1] in which it is stated that the will of a man domiciled in Scotland had been revoked, as regards land in England, on his subsequent marriage owing to operation of the Wills Act.

In re Martin[2], Lindley, M.R. said that this provision of the Wills Act does not apply to the wills of foreigners domiciled abroad. He refers to an authority mentioned by a text writer but does not name the case and I have been unable to trace it. *Caithness, supra,* was not cited and was therefore not expressly overruled.

The two cases are in conflict. I do not think that the decision in *Martin*[2] is to be preferred merely because it is later in date. Nor is it a decision of the Court of Appeal because it occurs in a dissenting judgment but it was necessary to that judgment and is not *obiter.* The two Lords Justices did not differ from the Master of the Rolls on this point; on their view of the facts the testatrix was domiciled in England so the point did not require decision. The conflict is between two single decisions but *Martin's* case was much more fully argued and I think the opinion of Lord Lindley is the weightier authority.

In 6 *Hailsham,* p. 250, note (f) this opinion is accepted without qualification. Professor Keith, in the fifth edition of Dicey at p. 592, note z, is less explicit but he thinks that the matter is governed by the law of the matrimonial domicile. The editor of the tenth edition of Theobald, at p. 13, cites Keith and submits that *In re Caithness*[1] would not now be followed. I adopt the view of these text writers and hold that *Caithness*[1] is in effect overruled by *Martin*[2]. This would conclude the matter were it not for a local case, *Re Shaik Abubakar*[3], in which it was held that the subsequent marriage of a testator domiciled in Arabia made his will inoperative as to land in the Colony. This decision is expressly founded on the concluding paragraph of the judgment of Lindley M.R. *In re Martin*[2], *supra.* It is therefore necessary to examine these two cases more closely. In *Martin's* case a Frenchwoman made an informal will and afterwards married. The marriage subsisted until her death and she had not altered the will. Lindley M.R. clearly held that the testatrix was domiciled in France; that her will, when made, was valid by French law; that the marriage did not change her domicile; that by French law marriage does not revoke a will; that her will was accordingly not revoked by her marriage; that it effectively bequeathed her English movables and that that it ought therefore to be admitted to probate. He added that the will was inoperative as to English land; this, however, was because, as he had said at the outset, it was not attested.

In short, the judgment contains two statements relevant to the question now in issue — first, that a foreign will is not revoked on marriage by operation of the English Wills Act and secondly that an unattested will does not effectively devise English land. These two statements are quite separate and distinct. The former is a proposition of the conflict laws. The

second is a proposition of the internal English law. The will in question, being unattested, would not have devised the English land even if the testatrix had never been married.

The report of *Abubakar's* case does not state that the will was attested but I think it must have been and that this is a material distinction between the two cases which the learned Chief Justice overlooked. He has treated the concluding statement in the judgment of Lindley, M.R. as an exception to, or qualification of, the earlier proposition. With all due respect, I think that he erred in so doing. In my view his decision cannot be supported by the authority on which it is ostensibly based. On the contrary, I find that the two are in direct conflict. In effect he has taken the view which was adopted in *Caithness*.

I am acutely conscious of the great difficulties which result where local precedents are not followed but where, as here, a local decision is found to be in conflict with the English authorities the latter will usually be followed. A local decision cannot be preferred merely because it is local. Moreover, the learned Chief Justice reached his decision with manifest reluctance; he would have taken the other view if he could have seen his way to do so.

I must add that it is merely a coincidence that in this case before me and also in *Abubakar, supra,* the testator was an Arab Moslem. The question does not depend in any way on the Mohammedan law. The rule, being a rule of the Conflict of Laws, relates equally to Europeans and Asiatics of all nationalities who are domiciled abroad. Their wills are not revoked on subsequent marriage by virtue of the Wills Ordinance.

The will in this case not being revoked is, *prima facie,* provable and the executors contend that the Johore probate should be resealed as a matter of course; I do not accept this; the Court has always a discretion to postpone or even refuse resealing in special circumstances.

The will itself is a curious one. It contains four main provisions, viz :—

(a) Appointment of executors, with directions;

(b) To collect all revenues, except those from a specified lot of land at Batu Pahat;

(c) To maintain themselves and all the minor children, during minority;

(d) To distribute the estate according to Mohammedan law when the youngest child comes of age.

It was admitted that the Johore Court has already decided that the postponement of distribution and the accompanying exclusion of the adult beneficiaries during the minority are void and has ordered that the estate be distributed forthwith according to the *faraid.* In effect therefore the will has wholly failed as to the Johore estate, except as to the appointment of executors, and if the application to remove them, which is now pending, succeeds the grant of probate will have been virtually revoked.

No information was forthcoming as to why the dispositions in the will were invalidated in Johore but presumably the Court applied some of the provisions of the Mohammedan law which limit the disposing powers of testators. Counsel for the plaintiffs submitted that these limitations do not apply in the Colony so that the will, if not revoked by the marriage, would effectively tie up the Singapore property. I do not accept this view. The only authority I can find is *In re Abdullah*[4]. I think the headnote is misleading; that case was decided before the first Mohammedans Ordinance was passed and in any event it is at least very doubtful whether either the Ordinance or the earlier Charters or any decision under them, would apply unless the testator were domiciled in the Colony. In general testamentary power depends on the *lex domicilii.* If the will is wholly or mainly inoperative by that law the Court might well decline to reseal a grant of probate.

There will therefore be a declaration that the will was not revoked by the subsequent marriage but the application for resealing is adjourned, *sine die,* with liberty to restore after conclusion of the proceedings now pending in Johore and meantime the receivership already ordered by this Court must continue.

If and when the application is restored, I think this Court will require, *inter alia* : — Proof of the domicile of the testator at the date of his death and proof of the law of that domicile regarding testamentary capacity.

But I suggest to all parties that they should at least consider very seriously whether they could not agree to drop the application for resealing and consent to a grant of letters of administration to the trust company with a view to distribution of the whole of the Singapore estate according to the Mohammedan law of intestacy. I therefore give the plaintiffs liberty to amend their petition, if so advised, by deleting the limitation to the immovable property. The formal Order can be settled in Chambers if necessary.

Order Accordingly.

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CONTENTS.

REPORTS:—

Martin Rhienus v. Sher Singh 201
Tan Geok Kwang v. Public Prosecutor 203
Asia Corporation Ltd. v. S. T. Ramakrishnan and Lim Kean Seng both trading under the style of Malayan Corporation 206
Kee Seng Nee v. Rex 210
Low Oi Lin v. Rex 210
Rex v. Lim Kang Chui 211
Sino-British Engineering Corporation (Malaya) Ltd. v. M. A. Namazie Ltd. 212
M. Ismail v. Mahadeo Yadau 215
Tan Kee Guan v. Rex 216
Quinn and Howland v. Rex 217
In the Estate of Abraham Penhas (deceased); Tan Soo Eng (widow) v. Isaac Penhas .. 223

FEDERATION REPORTS.

MARTIN RHIENUS v. SHER SINGH.

[Court of Appeal (Willan, C.J., Pretheroe, J. and Spenser-Wilkinson, J.) June 23, 1949]

[F.M.—Civil Appeal No. 36 of 1948]

Statement made in the course of a police investigation—Whether absolutely privileged—Police Report—Criminal Procedure Code Ss. 107 and 112.

The question raised in this case was whether the statement made by the respondent was a police report under S. 107 or a statement to the Police under S. 112 of the Criminal Procedure Code.

Held, (1) that the statement in this case was made after a police investigation had commenced and was therefore a statement to the Police under S. 112 of the Criminal Procedure Code; (2) that a statement made in the course of a police investigation is absolutely privileged.

Cases referred to:—

(1) *Samuel and Athimoolam v. Public Prosecutor* Criminal Appeal No 53 of 1946.

(2) *Royal Aquarium and Summer and Winter Garden Party v. Parkinson* (1892) 1 Q.B. 431 at p. 442.

(3) *Methuram Dass v. Jaggannath Das* I.L.R. 28 Cal. 794.

(4) *Dawkins v. Lord Rokeby* (1875) L.R. H.L. 744.

CIVIL APPEAL.

Regester for the Appellant.

Hastings for the Respondent.

Cur. Adv. Vult.

Willan, C. J.:—On the 29th of July 1947 the appellant, a Price Inspector employed in the Price Control Department of Government, visited the shop of Messrs. Hardial Singh and Company situated at Nos. 45 and 47 Ampang Street, Kuala Lumpur, together with another Price Inspector of the same department, to ascertain whether any price controlled goods were exposed for sale without having affixed thereto labels clearly indicating the selling price. The respondent is the manager of that shop. A conversation